

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Tuesday, January 9, 2024
Debtor.) 10:00 AM
)
STATUS CONFERENCE REGARDING
SECOND MOTION FOR PARTIAL
SUMMARY JUDGMENT OF ISSUES IN
REORGANIZED DEBTOR'S
OBJECTION TO CLAIM #2090 AND
CLAIMANT'S RESPONSE THERETO
FILED BY AMIR SHAHMIRZA
[14007]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

For the Reorganized STEVEN A. LAMB, ESQ.

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Also Present: Amir Shahmirza, Claimant

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18 Court Recorder:

LORENA PARADA/ANKEY THOMAS
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1 SAN FRANCISCO, CALIFORNIA, TUESDAY, JANUARY 9, 2024, 10:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session, the Honorable
5 Dennis Montali presiding, calling the matter of PG&E
6 Corporation.

7 THE COURT: All right. Good morning. Appearances,
8 please.

9 Mr. Jacobson, good morning.

10 MR. JACOBSON: Yes. Good morning, Your Honor.
11 Lawrence Jacobson, appearing for claimant, Komir, Inc. Amir
12 Shahmirza is present here with me. He can see the screen, but
13 he is off camera.

14 THE COURT: All right. Thank you.

15 Mr. Lamb?

16 MR. LAMB: Good morning, Your Honor. Steve Lamb for
17 the reorganized debtors.

18 THE COURT: And Mr. Rupp?

19 MR. RUPP: Good morning, Your Honor. Thomas Rupp, of
20 Keller Benvenuto Kim, on behalf of the reorganized debtors.

21 THE COURT: So as I've stated in my docket text order
22 of December 26th, I've decided to deny the Shahmirza/Komir
23 second motion for summary judgment at docket 14007 for the
24 reasons that I will explain in this oral ruling.

25 By way of introduction, I repeat verbatim what was set

1 forth in and is the issue presented by the second motion:

2 "PG&E never paid any real property taxes assessed against the
3 property. Komir paid all the real property taxes. These facts
4 alone warrant the granting of summary judgment number two.

5 Moreover, PG&E's use of the space occupied by the original
6 transmission lines was permissive, which precludes the
7 establishment of any prescriptive rights. PG&E did not occupy
8 the property under any adverse claim for five-years.

9 Therefore, the requisite five-year period could not have
10 expired between the initiation of any nonconsensual possession
11 and the filing of the state court lawsuit. For each of the
12 separate foregoing reasons, PG&E has no prescriptive rights.

13 The Court's order granting this motion for partial summary
14 judgment is not only appropriate, in view of the facts and the
15 law set forth above, but is the fair and just result as PG&E
16 acted unilaterally and proceeded over the objections of the
17 owner with no regard for the owner or its rights by using the
18 230 kV lines to service all of the customers to whom PG&E sold
19 the power delivered across claimant's property presumably to
20 the airport and to the northern peninsula of San Francisco."

21 To begin with the explanation of my ruling, however, I
22 need to clarify a statement made in my June 12th, 2023,
23 memorandum decision on the first motion for summary judgment,
24 docket 13832.

25 In that decision, I rejected PG&E's counter-motion for

1 summary judgment because the thrust of its argument leading up
2 to that decision, and thus my own reasoning, was that it held a
3 prescriptive easement over the property for decades. I
4 complained that the argument overlooked the reality of the
5 movement of the towers and the slight lowering of the lines in
6 2018 and pointed out that the Komir lawsuit was based upon the
7 change of use and the rights that were established well before
8 the five-year period for prescriptive easement to be
9 established.

10 The briefing for the second motion, the arguments, and
11 the evidence, and in particular the declaration of Melanie M.
12 Brayton, formerly Melanie M. Hildebrand, focused on Komir's
13 consent by acquiescence, between 2000 and 2018, which it
14 contends is not therefore an easement by prescription.

15 It was my understanding that the state of affairs
16 prior to 2018 were not in play and there was no need to focus
17 on whether PG&E's rights, going back decades, were established
18 by a consensual easement, a prescriptive easement, or some
19 other operation of law, but not the events described in the
20 briefing on the first motion and dealt with by the first
21 portion of my June 12th, 2023 memorandum decision, namely the
22 elimination of the recorded easement.

23 It is only upon the further arguments in the second
24 motion that I now understand that PG&E's statute-of-limitations
25 argument pertains to events that happened decades earlier.

1 That is the background for my decision today, namely that it is
2 simply the change of circumstances in 2018 that give Komir any
3 basis to complain and PG&E the right to uphold its present
4 position.

5 Further, as my explanation that follows should make
6 clear, the matters raised by Komir in its January 3rd, 2024 ex
7 parte motion, document docket 14253, are duplicative of matters
8 I have resolved. In fact, I made the decision before Komir
9 made that filing and only deferred it until now to take time to
10 explain my reasoning more fully. Thus, the ex-parte motion
11 will be denied as unnecessary.

12 Komir built its entire argument around the principle
13 that's established in the Hansen v. Sandridge Partners opinion
14 at 22 Cal.App.5th 1020. The Court of Appeals held that when
15 someone in Hansen's position, the alleged dominant estate, here
16 PG&E's position, the dominant estate, purports to obtain the
17 fruits of adverse possession by exclusively occupying the
18 affected property, to the exclusion of complete use by a
19 disputed owner, the subservient estate -- in that case,
20 Sandridge; in this case, Komir -- it must also have paid the
21 real property taxes.

22 In short, the reason is that, when under certain
23 nonexclusive circumstances, a party might obtain an easement,
24 in fact, when its occupation might create the equivalent of an
25 estate, it triggers the obligation to pay the taxes.

1 For several reasons, the Hansen case is simply not on
2 point and in fact is demonstrably distinguishable. For
3 openers, the Court's principal analysis and reasoning begins
4 with the discussion of equitable easements, none of which is
5 relevant to any component of the dispute between Komir and
6 PG&E.

7 After a brief summary of the factual history, the
8 court turns to its analysis, and the discussion in the opening
9 paragraph reads, "The Hansens are not entitled to an equitable
10 easement". Then the court opinion proceeds with a summary of
11 the law of equitable easements, and after pointing out the
12 standard of review, it applies that law to the facts and then
13 asserts two critical facts: Hansens negligently encroached;
14 and Sandridge, the neighbor, was not contributorily negligent.

15 After further discussion, it finally deals with
16 prescriptive easements and rejects the Hansen cross-appeal.
17 The decision does contain a useful and helpful tutorial on the
18 difference between estates, namely, ownership interests, that
19 are or may become possessory, and easement incorporeal
20 interests that are less than the right of ownership.

21 And the following quote from that case is dispositive
22 here. And this is, again, a direct quote. "The Hansens
23 counter that all easements involve use of another's property
24 that cannot be interfered with by the owner. But that does not
25 mean that all easements are the practical equivalent of an

1 estate. For example, consider an easement for a road across
2 the property of another. The Hansens observe that such
3 easements necessarily prevent servient landowner from farming
4 its property under the road, storing material in the roadway,
5 or building a structure on the roadway. But the servient
6 lender would still be able to drive on the road. Such
7 nonexclusive easements do not create the same problem that
8 arises when a purported easement prevents the servient tenement
9 landowner from using the land for any practical purpose."
10 Citations omitted and a quote.

11 Thus the analysis that contrasts the circumstances of
12 a prescriptive easement, or any other type of easement, and
13 whether it morphs into an estate are simply not supported by
14 the facts of the Hansen case.

15 A further distinction comes from the fact that Hansen
16 acted negligently when it planted the trees and installed the
17 irrigation system. And in fact, in summarizing this
18 discussion, the court pointed out that Erik Hansen did not know
19 that the lot line at issue involved disputed land, suggesting
20 that its encroachment was not intentional but did not settle
21 the issue of negligence.

22 The court added that Mr. Hansen did not know where the
23 lot line adjustment was, and that is why he was negligent in
24 planting a permanent crop without determining where the lot
25 line was located.

1 Here there is simply no suggestion that PG&E acted
2 wrongfully. There is no comparison between a ten-acre
3 pistachio tree orchard, that has no other use or access across
4 it, with no power lines over it, with Komir's two-acre
5 commercial property that has a pumping station on it, power
6 lines over it for decades, and on which the owner, Komir, has
7 leased the very property to PG&E, on occasion, over the years,
8 from time to time, since it acquired the property.

9 Add to that the fact that, in 2014, the San Mateo
10 Superior Court, in an action brought by Komir against the
11 County Flood Control District, overruled Komir's challenge
12 based upon a statute of limitations, and further upheld the
13 prescriptive easement, but at the same time awarded a nominal
14 amount of money to Komir for an unlawful expansion of that
15 easement by two lengths of fence enclosing 100 square feet of
16 the plaintiff's property.

17 Again, while the recovery is nominal, it was
18 measurable in dollars and more closely resembles the cases
19 cited in Hansen, such as Warsaw and MacDonald Properties, both
20 of which turned on an exception when the easement is
21 nonexclusive and the subservient landowner shares the benefit
22 of the easement.

23 Here the power lines did not exclude Komir from
24 maintaining the pumping station on its property, maintaining
25 through the district, or to be compensated for the pumping

1 irrigation district's placement of the unauthorized fences.
2 Nor is there any evidence about the power lines interfering
3 with other uses of the property beyond Komir's aspirational
4 intention to have a multi-story building constructed on the
5 property. That situation is either as it existed for decades
6 or had been slightly altered in 2018.

7 Finally, Komir argues that nothing about any change in
8 direction of the transmission lines or their height is relevant
9 to the second motion for summary judgment. The Court agrees
10 that those require a factual determination, and such
11 determination would not be appropriate on this motion.

12 The only matter for this action is the now denied
13 second motion for summary judgment framed in the way I
14 described at the outset of this ruling. Thus, the matters
15 raised in the ex parte motion are for another day.

16 That being said, it appears from the briefing that the
17 burden is on the subservient tenement here, Komir, to prove
18 that the repositioning of the line's height establishes its
19 damages. That, again, is for trial.

20 In that regard, the Court notes that in PG&E's
21 opposition to the motion, docket 14111, there is a discrepancy
22 between the statement at page 3, line 22, that the lines were
23 "raised slightly by 4.9 feet", and a statement, at page 9, line
24 21, that the conduction lines were, "lowered by 4.9 feet".

25 Komir's state court complaint filed on November 29th,

1 2018, is premised on Komir's belief that the lowering was
2 allegedly eleven feet and said nothing about any repositioning
3 of the lines. In contrast, the Raines declaration, document
4 14116, suggests a 4.9-foot lowering, beginning at the northern
5 boundary of the Komir property, and tapering down to no change
6 at the height that appears to be near the center, where Raines
7 described the sag in the power line at maximum temperature.

8 These observations are nothing more than that and are
9 not relevant to today's decision. However, if this matter goes
10 to trial -- and on the factual question it is worth pointing
11 out that the parties that Komir -- excuse me -- pointing out to
12 the parties that Komir's evidence of an eleven-foot decrease is
13 barely credible, and the Raines' evidence appears to be
14 virtually dispositive on that specific issue.

15 In summary, PG&E's conduct, vis-a-vis Komir and the
16 2018 changes at the property, have no similarity to the knowing
17 and negligent conduct of Hansen that deprived the adjacent
18 owner of virtually any meaningful use of the property in that
19 case.

20 Here, at best, there is a slight decrease in the
21 height of a portion of the power lines that run north and south
22 from the property line and perhaps give rise to some modest
23 trespass damages, if any. There is no need to act on the
24 competing evidentiary objections because the decision made here
25 is purely one of law. The history of how the easement came to

1 be is of no consequence.

2 The declaration of Ms. Brayton is consistent with the
3 absence of any consent by her or her late husband. But there
4 is no evidence to indicate how before that easement came to be
5 established -- how or before that easement came to be
6 established, nor does it matter. What is relevant here is
7 that, from 2000 forward, Komir acquiesced in the existing
8 easement.

9 So call it consensual, if you will, but it took no
10 action to do anything about it, and thus, to the extent that
11 the easement was established sometime prior, the statute of
12 limitations of three years would preclude any action. But
13 since Komir only acted when there was a change in 2018, there's
14 nothing to implicate any statute of limitations, but merely the
15 question of whether the slight adjustment in height at one end
16 of the property gave rise to any measurable damage based upon
17 the theory of trespass.

18 The events of 2018, however characterized, did not
19 eliminate the easement rights PG&E enjoyed and utilized for
20 decades. That will be dealt with at trial if the parties do
21 not finally settle this case.

22 Stated differently, Mr. Shahmirza stated that he
23 withdrew his consent when the power lines were moved in 2018,
24 but the removal of his consent was irrelevant. The easement
25 was established long before Mr. Shahmirza ever bought the

1 property, and therefore to withdraw consent was a nullity,
2 because the consent was not relevant in the first place. It
3 was, again, I'll repeat, only the change in 2018 that might
4 have created a trespass, but as I concluded from the evidence,
5 did not constitute an abandonment or elimination of the
6 easement that existed through the lines.

7 And again, the notion that power lines across and over
8 property create a separate measurable parcel, and to compare it
9 with the ten acres of pistachio trees in the country, is just
10 simply a nonstarter. And there's no indication, as I stated
11 previously, that the presence of the power lines took away
12 various options available to Komir or Shahmirza for what was
13 taking place on the ground.

14 For the foregoing reasons, the second motion will be
15 denied and the Court will issue an order to that effect later
16 today.

17 Counsel should meet and confer about what should come
18 next. The Court will hold a status conference on January 24th,
19 2024, at 10 a.m., to discuss the future events left open for
20 consideration after this ruling as contemplated in the
21 stipulation of July 25th, 2023, document number 13920.

22 So that will conclude my ruling, and I don't want to
23 take any further argument. Are there any questions?

24 Mr. Jacobson?

25 MR. JACOBSON: No, I would make comments, but I'm

1 understanding that those are not welcome at the moment.

2 THE COURT: Well, you can make a comment. I just
3 don't want to take further argument. Make a comment. I'm not
4 trying to silence you. I just -- I've made my decision, and it
5 is my decision, but feel free to comment.

6 MR. JACOBSON: The issue started with the lowering of
7 the lines. And as I'm understanding the ruling, the lowering
8 of the lines and its effect is the issue now. But there is a
9 crossover here, because I understand the Hansen case to talk
10 about the exclusive use of the disputed space, not the ability
11 of the owner to use the property for other purposes.

12 And both Brayton and Shahmirza have made their
13 declarations that both intended to develop and construct. So
14 that the lines not -- the use of the lines space is not only
15 exclusive, but the placement of the lines adversely affects the
16 use between the ground and the transmission towers.

17 And the evidence in the record is that neither Brayton
18 nor Komir purchased this property to be farmers or miners or to
19 park cars. So PG&E is profiting from all of the electricity
20 that passes through. But neither Brayton nor Komir can use the
21 space under the lines for their intended purpose. That's my
22 comment.

23 THE COURT: My only response -- I'm not going to
24 debate it. I'm simply recalling your argument before in your
25 briefing. Again, I'm not criticizing you. You cast your fate

1 with the Hansen case, and you made me read the Hansen case,
2 which, of course, is my responsibility. And I found the Hansen
3 case to be fascinating, and thorough, and scholarly, but not on
4 point, because I do not equate lines over property that has
5 been used by third parties, by PG&E, by the irrigation
6 district, by Komir leasing property on the ground to PG&E, I
7 don't find that equivalent to occupying ten acres where you
8 grow pistachio trees and there isn't even a road through it so
9 that no other use is there.

10 Now, you want to do hypotheticals? What if somebody
11 came along and put power lines over those pistachio trees?
12 Well, I'm not going to debate that because that isn't what
13 happened. And what would happen if PG&E deactivated those
14 lines across the Komir property and never earned a dollar from
15 it; they just sat there and housed scarecrows or birds? I
16 don't think it matters. The question is, is the air space
17 occupied by three or -- excuse me -- six power lines exclusive
18 for purposes of saying if the real property taxes aren't paid
19 it's the equivalent of an estate. And I simply don't accept
20 that.

21 So Mr. Lamb, any comments?

22 MR. LAMB: Your Honor, my only comment would be that
23 my understanding is that we're trying to deal with some
24 scheduling issues, which I appreciate. Hopefully we can come
25 to some agreement before this January 24th conference. But we

1 have a deadline right now, based on a prior stipulation, on
2 January 16th for expert depositions. And I believe opposing
3 counsel has agreed that it should be extended to at least
4 February 16th. I've asked for March 1st.

5 We should obviously meet and confer about further
6 dates, but if we could at least agree on the record that that
7 January 16th date isn't effective, then we can deal with that,
8 I think, later at the January 24th conference.

9 THE COURT: Well, the January 24th conference was just
10 picked as my next available PG&E date. I'm not wedded to that.
11 My fervent hope is that maybe the parties will settle this case
12 now, because I'm upset -- not upset personally, but I regret,
13 for both sides, the staggering expense that has been gone to by
14 both sides. And I don't take pleasure in telling Mr. Shahmirza
15 that I don't think his theory is a winner, but that's my
16 conclusion.

17 And therefore, to state it differently, I'm
18 acknowledging that PG&E had rights, that something changed in
19 2018, but it didn't change in a way, in my mind, that somehow
20 its easement was obliterated, and rather that there appears to
21 be a slight change in the height, not even the angle, the
22 height of the wires starting north of the property, but at
23 least assuming dropping five feet as it crossed into Komir, and
24 maybe to eight feet, or ten feet, or eleven feet, or some
25 amount of feet. Again, there must be some measure to quantify

1 a trespass. And I don't know whether that's 500 dollars, or
2 500,000 dollars, or some other amount. But it would seem to me
3 that, if one trespasses on one's property by altering
4 something, that there should be some consequence.

5 So my hope is that maybe the parties will come to a
6 consensual resolution. But if we have to have a trial about
7 what are the monetary consequences of the ruling that I've
8 made, we'll do it.

9 So I'll accommodate both of you and your own schedule.
10 And I won't order anybody to mediation. I will just plead you
11 to try to solve this problem so we don't have any further
12 litigation over it. So there's nothing concrete about that
13 date. I just picked it as the next date. I'll move it
14 anywhere you want if that's the consensus of both sides that we
15 do that.

16 MR. LAMB: And we will certainly meet and confer. And
17 I think we've tentatively agreed on mediation, but we're still
18 sorting out dates and we will work on that, Your Honor.

19 THE COURT: Yeah. I mean, look, I'm not asking Komir
20 to throw in the towel if they believe my decision is wrong. If
21 they wish to appeal my decision, they can do so. Of course
22 they have a right to do that.

23 But my point is, I'm just taking what -- again, I
24 compliment Mr. Jacobson for his research and focusing on that
25 case. And I thought the case was a wonderful learning

1 experience.

2 MR. JACOBSON: I would just say --

3 THE COURT: I just don't think it did what Mr.
4 Jacobson wanted it to do, in my mind.

5 MR. JACOBSON: Well, I --

6 THE COURT: Anyway -- yes, I'm sorry. Go ahead, Mr.
7 Jacobson.

8 MR. JACOBSON: My other comment would be that the
9 Court keep a neutral point of view about the significance of
10 the alteration, that every inch counts, and it's lowered for a
11 distance of 304 feet. And there's been disagreement between
12 PG&E and Komir about use and building, and a letter from PG&E
13 about what Komir can or can't do. And I would just ask the
14 Court to keep a neutral perspective on the amount of the
15 lowering of the lines, the consequences, and potential damage.

16 THE COURT: And Mr. Jacobson, I said 50,000 or
17 500,000, if you have experts that can show 15 million do it.
18 What I'm saying is we start with your own client's rather off-
19 the-cuff eleven foot, and the quote of some guy that says, oh,
20 those things have been adjusted by eleven feet Mr. Raines
21 says, well, it's not eleven feet; it's some other feet. It's
22 whatever it is. But I don't know how to quantify that in terms
23 of damage.

24 I do accept, and I believe -- again, this is what I
25 learned from the research and reading the case law -- that when

1 you mess with your easement rights, you don't lose your
2 easement, necessarily, but you might have to pay a trespass
3 consequence. And to me, that's -- and the simple -- the most
4 important lesson that I learned was what the superior court did
5 in 2014. It said to the irrigation district, you guys didn't
6 have the right to put those two fences up, and made them move
7 two fences.

8 But those fences were on the Komir property. And so
9 the court upheld the right for the irrigation district to have
10 the pumping station there and just made it -- and I don't even
11 know what the outcome was; I presume it was nominal.

12 So is it nominal to say to PG&E you shouldn't have
13 lowered the wire five feet? Well, maybe it's nominal; maybe
14 it's seven figures. I don't have any -- you know that I
15 couldn't determine that on a motion for summary judgment. And
16 it doesn't matter. There's no evidence of how we quantify it.
17 So of course I'm keeping a neutral attitude about that. Okay.

18 MR. JACOBSON: That's all I ask. We look forward to
19 the trial. We have seven or eight figure damage experts, so we
20 will look forward to being in front of you and talking about
21 that.

22 THE COURT: I look forward to approving a settlement.
23 But that's up to you and your client. So we'll see what
24 happens. And again, thank you for your time, and the time in
25 the briefing, and appreciate your participation on both sides.

1 Good job. And we'll conclude the hearing now at this point.

2 Thank you very much.

3 MR. LAMB: Thank you, Your Honor.

4 (Whereupon these proceedings were concluded at 10:30 AM)

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RULINGS:

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Second Motion of Amir Shahmirza, Komir,
Inc. for partial summary judgment of
issues in reorganized debtor's objection to
Claim 2090 is denied.

3 23

C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ SHARONA SHAPIRO, CET-492

eScribers

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Date: January 10, 2024

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